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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-221630

DATE: July 10, 1986

MATTER OF: Mike Monroney Aeronautical Center (FAA) -
Compensatory Time or Overtime

DIGEST:

For nearly 2 years, certain FAA payroll employees were given the option of using compensatory time in lieu of overtime pay. One group of employees worked four 10-hour days the first week of each pay period and took Friday off. Although such overtime work normally would be considered "regularly scheduled" for which compensatory time is not available, we conclude that this was essentially an informal extension of the flexible work schedule worked in prior years. These employees are not entitled to overtime compensation for such "regularly scheduled" overtime work where they did not work more than 40 hours in that workweek. Other employees who worked frequent or sporadic overtime on an irregular or unscheduled basis were properly entitled to compensatory time for such work and are not entitled to additional compensation.

This matter comes to us as a joint submission from the Federal Aviation Administration (FAA), Mike Monroney Aeronautical Center and the American Federation of Government Employees, Local 2282 (union).^{1/} We are asked whether certain agency employees who worked overtime and

^{1/} This request has been handled as a labor-relations matter under 4 C.F.R. Part 22 (1986).

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received compensatory time off are entitled to overtime pay for those extra hours worked, and if so, how the compensatory time already taken should be accounted for. We hold that the employees who worked irregular or occasional overtime are not entitled to overtime payments, and that employees who worked four 10-hour days with the fifth day off are not entitled to overtime where their hours of work did not exceed 40 hours per week.

BACKGROUND

Between November 3, 1980, and March 20, 1982, employees of the FAA payroll office in Oklahoma City, Oklahoma, participated in an alternative work schedule experiment in which 10-hour days were worked on the first and last 4 workdays of each pay period, and the intervening Fridays and Mondays were taken off. This work schedule was chosen to accommodate the payroll office workload, which reached its peak during the first 3 days of each pay period, when time and attendance reports for prior pay periods were entered into agency computers.

Beginning March 21, 1982, the FAA discontinued the compressed work schedule experiment and scheduled all payroll employees to workweeks of 8 hours per day, 5 days per week. All overtime worked from March 1982 until June 1983 was paid under title 5, United States Code, or the Fair Labor Standards Act (FLSA), as applicable.

Effective June 12, 1983, the FAA offered payroll employees the option of earning and using compensatory time since, according to the FAA submission, "* * * budgetary constraints would not permit this continued level of overtime payments." Compensatory time was offered to these employees following an informal agreement between the agency and the union.

Based on the time and attendance reports submitted by the agency, there were three employee work patterns established for the period from June 12, 1983, to March 19, 1985. One group of employees worked 10 hours per day, 4 days per week, during the first week of each pay period and took off Friday of that week through the use of compensatory time earned during the first 4 days of that week. A second group frequently worked overtime during the first and sometimes the second week of each pay period and received compensatory time for the hours worked.

The third group of employees worked overtime infrequently and sporadically, and either received premium pay or took compensatory time off. During this period, the agency continued to schedule all employees to workweeks of 8 hours per day, 5 days per week.

On March 19, 1985, compensatory time off was no longer offered to payroll employees who worked overtime. Although it is not clear in the record before us why the FAA discontinued the practice of offering compensatory time for overtime work, one agency document states the the FAA realized compensatory time cannot be granted for regularly scheduled overtime. The union filed two grievances with the agency alleging that cessation of the compensatory time option was improper and violated their negotiated agreement. Both grievances were denied by the Aeronautical Center director on June 18, 1985.

The issue we are asked to decide was not the subject of the grievance. Rather, we are asked whether employees who took compensatory time off from June 12, 1983, to March 19, 1985, are entitled to premium pay for the hours they worked overtime, and if so, how the compensatory time off taken by the employees should be accounted for. The FAA report states that these payroll employees are nonexempt under the FLSA and that they have received their full entitlements under FLSA.

OPINION

Statute and regulations

Under section 5542 of title 5, United States Code, "hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or * * * in excess of 8 hours in a day performed by an employee are overtime work and shall be paid," generally, at a rate of one and one-half times the employee's basic rate of pay. Title 5 further provides, as follows:

"§ 5543. Compensatory time off.

"(a) The head of an agency may -

"(1) on request of an employee, grant the employee compensatory time off from his scheduled tour of duty instead of payment for an equal amount of time spent in irregular or occasional overtime work; and

"(2) provide that an employee whose rate of basic pay is in excess of the maximum rate of basic pay for GS-10 shall be granted compensatory time off from his scheduled tour of duty equal to the amount of time spent in irregular or occasional overtime work instead of being paid for that work under section 5542 of this title." (Emphasis added.)

Office of Personnel Management (OPM) regulations define irregular or occasional overtime work as "overtime work that is not part of an employee's regularly scheduled administrative workweek." 5 C.F.R. § 550.103(f) (1986). A regularly scheduled administrative workweek, in turn, for a full-time employee, means "the period within an administrative workweek * * * within which the employee is regularly scheduled to work." 5 C.F.R. § 550.103(n). Work which is scheduled in advance of an administrative workweek is regularly scheduled work under OPM regulations. 5 C.F.R. § 550.103(p). See James Barber, et al., 63 Comp. Gen. 316, 319 (1984).

Heads of agencies are required to "schedule an employee's regularly scheduled administrative workweek so that it corresponds with the employee's actual work requirements." 5 C.F.R. § 610.121(b)(1). Furthermore, the regulations state that if an agency knowingly fails to do so, the employee is entitled to premium pay for that period of work as if it were regularly scheduled. In this regard, it must be determined that the head of the agency: "(i) Had knowledge of the specific days and hours of the work requirement in advance of the administrative workweek,

and (ii) had the opportunity to determine which employee had to be scheduled, or rescheduled, to meet the specific days and hours of that work requirement." 5 C.F.R. § 610.121(b)(3).

First group

In the present case, the first group of employees described above should not have been authorized compensatory time for working more than 8 hours per day during the first week of each pay period. Although the overtime work was not scheduled in advance (five 8-hour days were scheduled), these employees consistently worked four 10-hour days, and it appears that the agency failed to schedule the employee's administrative workweek to correspond with the employees's actual work requirements. See 5 C.F.R. § 610.121(b). Thus, hours of work in excess of 8 hours for this group of employees normally would be considered "regularly scheduled" overtime.

We note, however, that these employees generally did not work more than 40 hours during the first week of the pay period. Thus, if we converted the compensatory time to overtime hours, the employees would have worked only 32 hours of regular time, and they would have to be charged annual leave for the Friday they took off each week.

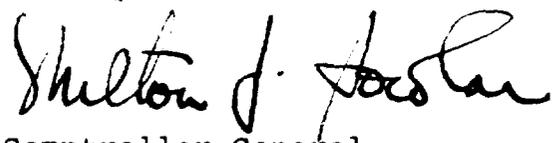
We believe that what occurred here was an informal extension of the flexible and compressed work schedule used by these employees from 1980 until 1982. Thus, to the extent that this first group of employees worked four 10-hour days and did not work more than 40 hours in that first week of the pay period, we conclude that they are not entitled to additional compensation for performing "regularly scheduled" overtime. See 5 U.S.C. § 6123 (Supp. I, 1983). Any additional hours of work beyond 40 hours per week performed by this group of employees would appear from the record before us to be "irregular and occasional" overtime which may be compensated with compensatory time.

Second and third groups

As to the second and third groups of employees, we note that the time and attendance records for that period reflect either erratic patterns of overtime work during both the first and second weeks of the pay period or sporadic overtime worked a few times each year. This would not constitute regularly scheduled overtime because the reports before us do not provide sufficient evidence of (1) agency knowledge of the specific work requirements prior to the workweek, and (2) which employee would work the overtime. Therefore, these employees would be deemed to have worked "irregular or occasional" overtime, and they were entitled to compensatory time off if they chose it in lieu of premium pay. Alison Palmer, B-180142, August 6, 1975.

CONCLUSION

Accordingly, employees who worked four 10-hour days with the fifth day off are not entitled to additional compensation for "regularly scheduled" overtime. Other employees who worked frequent or sporadic overtime were entitled to earn and use compensatory time for such irregular or occasional overtime and are likewise not entitled to additional compensation.

for 
Comptroller General
of the United States